

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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WILLIE ERVIN CHADWICK,
Plaintiff,
v.
RICK HILL, Warden
Defendant.

No. 2:20-cv-01264 WBS GGH P

ORDER

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Petitioner, a state prisoner proceeding through counsel, has filed this application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 25, 2021, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed

1 within twenty-one days. (See Docket No. 17.) Petitioner has
2 filed objections to the findings and recommendations. (See Docket
3 No. 21.)

4 Petitioner contends that the magistrate judge erred
5 when he held that a "thin reed of evidence" showing that the
6 victim entered petitioner's house in a violent (as opposed to
7 angry) fashion could support a finding that the victim "forcibly
8 entered" petitioner's home and was sufficient to justify
9 counsel's decision to advise her client that he did not need to
10 testify to support his claim of self-defense. (See Docket No. 21
11 at 2.) Petitioner argues that this "thin reed" of evidence
12 establishes only that the victim acted in an arguably "violent"
13 manner upon entry into the residence but not that she engaged in
14 violence or acted unlawful and forcibly in order to gain entry
15 into the residence, as required for California Criminal Jury
16 Instruction No. 3477 to apply.¹ (See id. at 3.)

17 The Supreme Court has instructed that counsel should be
18 "strongly presumed to have rendered adequate assistance and made
19 all significant decisions in the exercise of reasonable
20 professional judgment." Cullen v. Pinholster, 563 U.S. 170, 189
21 (2011) (internal citations omitted). The court agrees that trial

22 ¹ California Criminal Jury Instruction No. 3477 raises
23 the presumption that the resident was reasonably afraid of death
24 or great bodily injury if: (1) an intruder unlawfully and
25 forcibly (entered/[or] was entering) the defendant's home; (2)
26 the defendant knew [or reasonably believed] that an intruder
27 unlawfully and forcibly (entered/[or] was entering) the
28 defendant's home; (3) the intruder was not a member of the
defendant's household or family;; and (4) the defendant used
force intended to or likely to cause death or great bodily injury
to the intruder inside the home. (See Cal. Crim. Jury Instruction
No. 3477.)

1 counsel's reliance on the jury instruction in lieu of
2 petitioner's testimony was not unreasonable. The trial court
3 agreed with petitioner's trial counsel that the jury might
4 conclude that a forcible entry had occurred given the victim's
5 aggressive manner when she entered into the house. (See Docket
6 No. 17 at 13.) Moreover, petitioner's trial counsel stated that
7 she had practiced putting the defendant on the stand but
8 determined that he was a poor witness who was easily rattled into
9 becoming hostile. (See id. at 8.) Petitioner's prior domestic
10 abuse convictions, violent crimes, and other crimes of moral
11 turpitude would have been permitted for impeachment purposes had
12 petitioner decided to take the stand and were bound to have
13 significantly influenced the jury's perception of petitioner's
14 credibility. (See id. at 14.) Given the deference granted to
15 the tactical decisions of counsel, defendant does not come close
16 to establishing ineffective assistance of counsel, much less that
17 he was prejudiced by counsel's conduct.

18 In accordance with the provisions of 28 U.S.C. §
19 636(b)(1)(C) and Local Rule 304, this court has conducted a de
20 novo review of this case. Having carefully reviewed the entire
21 file, the court finds the findings and recommendations to be
22 supported by the record and by proper analysis.

23 Because the court concludes that "jurists of reason"
24 could reach different conclusions with respect to plaintiff's
25 ineffective assistance of counsel claim, the court will issue a
26 certificate of appealability on that issue under 28 U.S.C. §
27 2253(c). See Fed. R. App. P. 22(b); Jennings v. Woodford, 290
28 F.3d 1006, 1010 (9th Cir. 2002).

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed January 25, 2020 are adopted in full;

2. The habeas petition is denied; and

3. The court issues a certificate of appealability as to petitioner's ineffective assistance of counsel claim.

Dated: March 15, 2021



WILLIAM B. SHUBB

UNITED STATES DISTRICT JUDGE